



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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██████████
Docket No: 0145-21
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████
USMC, ██████████

Ref: (a) 10 U.S.C. § 1552
(b) MCO 5354.1E with Admin Change, Marine Corps Prohibited Activities and Conduct (PAC) Prevention and Response Policy, 29 March 2018
(c) MCO P1070.12K w/CH 1, Marine Corps Individual Records Administrative Manual (IRAM), 14 July 2000
(d) MCO 5800.16, Legal Support and Administrative Manual (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty), 8 August 2018
(e) SECNAVINST 1420.3, Department of the Navy Commissioned Officer Promotion Program, 28 March 2019
(f) SECNAVINST 1650.1J, Department of the Navy Military Awards Policy, 29 May 2019

Encl: (1) DD Form 149 w/enclosures
(2) ██████████ Supply Battalion, Combat Logistics Regiment ██████████ CO Memo 5800 CO, subj: Command Investigation into the Facts and Circumstances Surrounding Possible Officer and Staff Noncommissioned Officer Misconduct at Combat Logistics Company ██████████, 11 March 2019
(3) ██████████ Supply Battalion, Combat Logistics Regiment ██████████ Memo, subj: Command Investigation into the Facts and Circumstances Surrounding Possible Officer and Staff Noncommissioned Officer Misconduct at Combat Logistics Company ██████████, 16 March 2019
(4) Petitioner's EO Complaint, 15 March 2019
(5) Headquarters and Headquarters Squadron, Marine Corps Air Station ██████████ Memorandum 5354 EOA, subj: Complaint Analysis c/o DASH Case Number ██████████, 28 March 2019
(6) ██████████ Supply Battalion, Combat Logistics Regiment ██████████ CO Memo 5354 CO, subj: Notification of Informal Resolution of Complaint c/o [Petitioner] DASH Case Number: ██████████, 1 April 2019
(7) ██████████ Marine Logistics Group CG Memo 5812 SJA, subj: Notification of Intent to Impose Nonjudicial Punishment, 15 May 2019
(8) ██████████ E-mail, subj: EOT, sent Thursday, June 6, 2019 @ 1:11 PM
(9) DD Form 458, Charge Sheet, 18 September 2019
(10) ██████████ Marine Logistics Group CG Memo 5800 CG/kdr, subj: Dismissal of Charges in the case of [Petitioner], U.S. Marine Corps, 9 October 2019
(11) NAVMC 118(11), Administrative Remarks, 18 October 2019
(12) Petitioner's Memo 5800 EMB, subj: Written Rebuttal of Page 11 Counseling, 24

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- (13) IGMC Letter 5041 IGX, subj: Inspector General of the Marine Corps Case # [REDACTED], Department of Defense Hotline Complaint # [REDACTED], 18 November 2019
- (14) [REDACTED] Marine Logistics Group Memo 1920 CG, subj: Report of Misconduct in the case of [Petitioner], 21 January 2020
- (15) Petitioner's Memo 5800 EMB, subj: Statement in Response to Report of Misconduct, 29 January 2020
- (16) CMC Memo 1420 JPLP, subj: Notification of Promotion Withhold and Possible Removal from the Fiscal Year 2021 USMC Captain Promotion List, 3 June 2020
- (17) [REDACTED] Marine Expeditionary Force CG Memo 1920 CG, subj: Report of Misconduct in the case of [Petitioner] (First Endorsement on Enclosure (13)), 10 March 2020
- (18) CMC Memo 1920 JPL, subj: Termination of Administrative Proceedings in case of [Petitioner], 18 May 2020
- (19) Petitioner's Memo 5800 EMB, subj: Written Matters in support of Fiscal Year 2021 USMC Captain Promotion ICO [Petitioner], U.S. Marine Corps, 19 June 2020
- (20) NAVMC 10835C, USMC Fitness Report (FITREP ID #3098413) (20200501 - 20200715)
- (21) NAVMC 10835C, USMC Fitness Report (FITREP ID #3137518) (20200501 - 20200715)
- (22) CMC Action Memo, subj: Promotion Recommendation in the case of [Petitioner], 30 November 2020
- (23) HQMC Memo 1070 JPL, subj: Application for Correction in the case of [Petitioner], 17 November 2021
- (24) Petitioner's E-mail Msg, subj: RE: CUI - BNCR Docket NR20210000145 - CUI (1 of 2), sent Monday, December 6, 2021 @ 6:46:09 PM (w/ attachments)
- (25) Petitioner's E-mail Msg, subj: RE: CUI - BCNR Docket NR 20210000145 - CUI (2 of 2), sent Monday, December 6, 2021 @ 3:47 PM
- (26) Petitioner's E-mail Msg, subj: RE: RE: CUI - BCNR Docket NR20210000145 - CUI (3 of 3), sent Friday, December 10, 2021 @ 7:52:02 PM (w/attachments)

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting the removal of all derogatory material from her naval record, to include her failure of selection (FOS) for promotion;¹ promotion to the rank of captain pursuant to her selection by the FY 2021 Marine Corps (USMC) Captain Promotion Selection Board (PSB); and the issuance of an end-of-tour award pertaining to her May 2019 permanent change of station which was rescinded due to misconduct. In enclosure (25), Petitioner requested the removal of a non-observed fitness report (FITREP) for the period 1 May 2020 to 15 July 2020.

2. The Board reviewed Petitioner's allegations of error or injustice on 16 December 2021 and, pursuant to its regulations, determined that no corrective action should be taken on Petitioner's

¹ Petitioner's original application request removal of the adverse material dated 12 June 2020 from her record. It is not clear precisely what information she was referring to. On 21 June 2021, Petitioner supplemented her request to include removal of all derogatory material from her naval record, to include her FOS resulting from the removal of her name from the Fiscal Year 2021 USMC Captain promotion selection list.

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naval record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Except for that part of her request pertaining to the removal of the FITREP for the reporting period 1 May 2020 to 15 July 2020, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy (DON) before applying to this Board for relief. Petitioner must first request removal of the subject FITREP through the Headquarters, Marine Corps (HQMC) Performance Evaluation Review Board (PERB) before this Board will consider such a request.

b. On 11 March 2019, a preliminary inquiry (PI) pertaining to an unrelated matter found evidence of possible fraternization between Petitioner and two separate noncommissioned officers (NCO) within her unit. See enclosure (2).

c. By memorandum dated 11 March 2019, a command investigation (CI) was appointed to investigate "the facts and circumstances surrounding possible officer and staff noncommissioned officer misconduct" in Petitioner's unit," pursuant to the recommendation of the above referenced PI. See enclosure (2).

d. On 15 March 2019, the investigating officer (IO) conducted an interview of Petitioner. After advising Petitioner of her rights under Article 31, Uniform Code of Military Justice (UCMJ), the IO asked Petitioner during this interview if she had been off-base with any enlisted personnel. Petitioner responded, "No, never," in response to this question. When asked to verify this answer, she affirmed this response on three separation occasions during the interview. See enclosure (3).

e. After the above referenced interview was complete, Petitioner submitted an Equal Opportunity (EO) complaint against the IO during the afternoon of 15 March 2019, asserting that the IO "harassed/intimidated [her] into signing [her] Article 31 Rights." She asserted in this complaint that the IO stated that she needed "to know how to conduct [herself] around Enlisted Marines but especially as a Female Officer [she] need[ed] to be even more aware than [her] male counterparts." She further asserted that the IO told her that she should not wear certain items of clothing to events held on/off base, and that the IO questioned her about wearing a dress to an event on base with her co-workers which was said to be "asking for attention" and "giving the wrong impression" based upon previously gathered statements. She also claimed to have specifically informed the IO of all of the enlisted Marines with whom she had been off of the installation. Ultimately, she asserted that the comments about her being a female and emphasizing the fact that she was held to a different standard based on her sex was uncalled for and discriminatory in nature. See enclosure (4).

f. By memorandum dated 28 March 2019, the unit EO advisor (EOA) informed Petitioner's commander that her allegations against the IO met the prima facie requirements for acceptance and processing under reference (b), and forwarded the following allegations for appropriate



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action: (1) That the IO harassed and discriminated against Petitioner; and (2) That the IO made inappropriate comments to Petitioner on clothing worn outside of work, and different standards for female Marine officers. This memorandum also informed the commander that Petitioner requested to resolve this complaint by a mediation session held by a qualified EOA. See enclosure (5).

g. By memorandum dated 1 April 2019, Petitioner's commander informed Petitioner that he was allowing her EO allegations against the IO to be resolved through informal resolution (i.e., third party mediation) as she requested. See enclosure (6).

h. By memorandum dated 24 April 2019, the IO issued the findings of his CI.² Specifically, he found that Petitioner made false official statements during the course of the CI in violation of Article 107, UCMJ;³ engaged in conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ;⁴ and fraternized with several enlisted Marines in her unit in violation of Article 134, UCMJ.⁵ He recommended that the command take appropriate administrative and/or punitive action against Petitioner for this misconduct, suggesting that non-judicial punishment (NJP) may be warranted based upon what he described as Petitioner's evasive conduct during her interview, but that a non-punitive letter of caution may be warranted if Petitioner shows an adequate level of remorse. See enclosure (3).

i. By memorandum dated 15 May 2019, Petitioner's commander notified Petitioner of his intent to impose NJP for the misconduct substantiated by the above referenced CI. Specifically, he informed Petitioner that she was accused of making a false statement to the IO regarding the number of times that she went on dates with a particular NCO in violation of Article 107, UCMJ; engaging in conduct unbecoming an officer and gentleman by approaching a senior NCO in her unit and stating, "I'm not fucking [the said NCO]," or words to that effect, in violation of Article 133, UCMJ; and that she fraternized with five named enlisted Marines in violation of Article 134, UCMJ. See enclosure (7).

j. On 20 May 2019, Petitioner refused to accept NJP punishment after consulting with counsel. See enclosure (7).

² This memorandum is actually erroneously dated 16 March 2019. Based on context and other evidence, the Board determined that the correct date for the submission of this memorandum was 24 April 2019.

³ The IO found that Petitioner provided a false statement during her interview with the IO when she initially denied all allegations of fraternization. Specifically, she initially denied traveling off base with any enlisted personnel during the first interview, but confessed to doing so during the second interview after being confronted with evidence to the contrary while continuing to give false statements regarding the number of occasions on which she went on dates with one particular NCO. Finally, the IO found that Petitioner gave false statements denying that the NCO bought her drinks during an October Fest event.

⁴ The IO found that the false statements made by Petitioner which constituted a violation of Article 107, UCMJ, also constituted conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ. He also found that Petitioner engaged in conduct unbecoming an officer and gentleman when she said to the senior NCO in her unit, "I'm not fucking [the said NCO]," or words to that effect.

⁵ The IO found that Petitioner made a habit of socializing with enlisted personnel outside of the professional environment, and provided seven specific examples with four different Marines to support this finding. He also found that Petitioner went on three verified dates with a senior NCO in her unit, which was perceived as a romantic relationship, and that Petitioner demonstrated a blatant disregard for policy by frequently riding to work with enlisted staff.

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k. On 6 June 2019, Petitioner's immediate commander informed her that the commendation award that he had submitted upon the end of her tour had been rescinded. See enclosure (8).

l. On 18 September 2019, the charges for which Petitioner refused NJP were preferred to court-martial. See enclosure (9).

m. By memorandum dated 9 October 2019, the convening authority dismissed the court-martial charges preferred against Petitioner without prejudice. See enclosure (10).

n. On 17 October 2019, Petitioner was formally counseled in writing in accordance with reference (c) for the same alleged misconduct for which she refused NJP and was preferred to court-martial. See enclosure (11).

o. By memorandum dated 24 October 2019, Petitioner rebutted the counseling statement referred to in paragraph 3n above in accordance with reference (c). Specifically, she stated that she never acted or participated in any conduct that was inappropriate or unbecoming of a Marine officer; that her actions were at all times driven by professionalism, unit comradery, and esprit de corps; and that the allegations were without merit. She also asserted that the CI findings were marred by implicit and explicit gender bias, and that her interactions with subordinate enlisted Marines would not have been viewed as inappropriate if she were a male Marine officer. See enclosure (12).

p. On 9 September 2019, Petitioner submitted a Military Whistleblower Protection Act (MWPA) complaint to the Department of Defense Inspector General (DODIG) hotline. See enclosure (13).

q. By letter dated 18 November 2019, the Director of Investigations, Inspector General of the Marine Corps (IGMC), informed Petitioner that the DODIG concurred with the recommendation of the IGMC that Petitioner's hotline complaint did not meet the threshold requirements for a MWPA investigation. See enclosure (13).

r. By memorandum dated 21 January 2020, the Commanding General (CG), [REDACTED] Marine Logistics Group (MLG), documented Petitioner's misconduct in a Report of Misconduct (ROM) in accordance with reference (d). The misconduct listed was the same that appeared in Petitioner's Page 11 counseling statement (see paragraph 3n above). The ROM stated that Petitioner would have the opportunity review its contents and notified that it may be included in her naval record. Finally, the CG, [REDACTED] MLG, specifically recommended that Petitioner not be separated via notification procedures for substandard performance of duty and/or misconduct and moral or professional dereliction. See enclosure (14).

s. By memorandum dated 29 January 2020, Petitioner provided a statement in response to the ROM discussed in paragraph 3r above. Specifically, she stated that she disagreed with the facts and opinions contained in the ROM, and that her actions as a Marine Corps officer were entirely appropriate, professional, and honorable. She also stood by her rebuttal to the counseling statement discussed in paragraph 3o above. See enclosure (15).

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- t. In February 2020, Petitioner was selected for promotion by the FY 2021 USMC Captain [REDACTED]. See enclosure (16).
- u. By memorandum dated 10 March 2020, the CG, [REDACTED] Marine Expeditionary Force (MEF) forwarded the ROM and Petitioner's response thereto, non-concurring with part of its content. Specifically, the CG, [REDACTED] MEF, did not concur with the characterization as fraternization of Petitioner's interactions with any enlisted Marines other than the one with whom she was found to have dated, and did not find the statement made by Petitioner to the senior NCO denying any sexual intercourse with the named NCO to constitute conduct unbecoming an officer and gentleman under the circumstances.⁶ Because he believed that the Page 11 counseling statement (Enclosure (11)) inaccurately reflected the extent of Petitioner's misconduct and that Petitioner's remaining misconduct was minor in nature and could be appropriately handled via informal administrative measures, the CG, [REDACTED] MEF, recommended that adverse material either not be included in Petitioner's naval record or, if included, that the Page 11 counseling statement be rescinded or appropriately redacted. See enclosure (17).
- v. By memorandum dated 18 May 2020, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) determined that the information contained within the ROM did not warrant processing for administrative separation, and directed that adverse material concerning the matter would be included in Petitioner's naval record. He also directed that Enclosure (11) be redacted to exclude the findings with which the [REDACTED] MEF CG non-concurred.⁷ See enclosure (18).
- w. By memorandum dated 3 June 2020, Petitioner was notified that her promotion to captain pursuant to her selection by the FY 2021 USMC Captain PSB was withheld pending a determination of whether she was mentally, physically, morally, and professionally qualified for promotion in accordance with reference (e). She was informed of her right to submit matters for consideration by the Commandant of the Marine Corps (CMC) and the Secretary of the Navy (SECNAV). See enclosure (16).
- x. By memorandum dated 19 June 2020, Petitioner submitted matters in response to the withhold of her promotion pursuant to the FY 2021 USMC Captain [REDACTED]. Specifically, she acknowledged her need to lead by example and to ensure that her reputation remains above reproach at all times, while highlighting her contributions to the Marine Corps and exemplary performance. See enclosure (19).
- y. On 25 September 2020, Petitioner received an adverse FITREP for the reporting period 1 May 2020 to 15 July 2020 for comment. Her Reporting Senior (RS) assigned her the lowest rating in Blocks F1 ("Setting the Example") and G3 ("Judgment"), which he justified by citing to Petitioner's formal counseling for "fraternizing with a SSgt that [she] directly reported on" and

⁶ The CG, [REDACTED] MEF, did concur with the finding that Petitioner's interactions with the named NCO with whom she was found to be dating constituted fraternization in violation of Article 134, UCMJ, and the finding that Petitioner made false official statements in violation of Article 107, UCMJ.

⁷ All of the adverse material in Petitioner's naval record pertaining to the findings of the CI are redacted to remove reference to those findings with which the CG, [REDACTED] MEF, did not concur.

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for “making a false official statement to an investigating officer.” The Reviewing Officer (RO) comments supported the RS ratings. Petitioner provided a statement in rebuttal to the adverse matters reported in the FITREP, about which the RS stated that he did not agree. See enclosure (20).

z. On 9 October 2020, Petitioner’s RS signed a new FITREP for the reporting period 1 May 2020 to 15 July 2020, which did not include any adverse information. Her RO officer made no comments, stating that he did not have enough observation time since Petitioner’s last reporting period.⁸ See enclosure (21).

aa. By memorandum dated 30 November 2020, the CMC recommended to the SECNAV that Petitioner be removed from the FY 2021 USMC Captain promotion selection list. In making this recommendation, the CMC stated that Petitioner’s “conduct fell below that expected of a naval officer.” He also noted that the adverse material in Petitioner’s case was not available for consideration by the PSB, so her removal from the promotion selection list was appropriate to ensure the fairness of the officer selection process. See enclosure (22).

bb. By signature dated 23 February 2021, the SECNAV approved the CMC recommendation that Petitioner be removed from the FY 2021 USMC Captain promotion selection list. This constituted Petitioner’s first FOS for promotion. See enclosure (22).

cc. Petitioner made the following allegations of error or injustice in her original application:

(1) All of the adverse material placed in her naval record was sexually biased due to her status as a female officer, and based off of “loaded questions” insinuating fraternization by the IO. In support of this assertion, Petitioner cited to her EO complaint where she felt harassed and belittled by the IO, and states that the IO used suggestive language during the interviews and suggested that female officers need to be more careful in how they are perceived.

(2) Her EO complaint was filed before the IO completed his investigation report, presumably suggesting that his findings were in reprisal for her complaint.

(3) The CI was inadequate in that the IO collected only three statements, two of which did not favor her leadership style and one of which was from a witness who may have been biased against her due to adverse action that she took against him. Petitioner also suggested that one of the statements was unreliable since the language contained within it was changed from “A Marine saw” to “He saw” (i.e., she contends that the witness statement was falsified to change a third-party observation to a first-party observation).

See enclosure (1).

dd. Petitioner’s application and records were reviewed by the HQMC Military Personnel Law Branch (JPL), which provided an advisory opinion (AO) for the Board’s consideration. The AO recommended that Petitioner’s application be denied because she had not provided

⁸ It is not clear from the record what prompted the change to Petitioner’s FITREP relative to the initial ratings and comments discussed in paragraph 3y.

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substantial evidence of any material error or injustice. With regard to Petitioner's contention that she was treated unfairly due to her gender, the AO found that her claims of bias were resolved during the EO process and found to be without merit. The AO also found that there is no evidence that the IO impermissibly considered Petitioner's sex in the course of conducting the CI or in the development of his findings and recommendations. Accordingly, the AO recommended that the Board apply the presumption of regularity to the CG [REDACTED] MLG's decision to substantiate the misconduct revealed by the CI. With regard to Petitioner's promotion, the AO found that SECNAV properly withheld Petitioner's promotion to captain in accordance with reference (e) because, at the time of her selection, Petitioner was pending an investigation to determine whether disciplinary action was appropriate. It remained appropriate after the DC (M&RA) took action to close her misconduct case because, at that point, there was "substantiated adverse information" about Petitioner that was "material to the decision to appoint the officer" and there was cause to believe that she was "mentally, physically, morally, or professionally unqualified" to perform the duties of the next grade." Finally, the AO opined that SECNAV acted within his authority under reference (e) to removed Petitioner from the promotion selection list upon finding that her conduct fell below that expected of a naval officer. Finally, with regard to the rescission of Petitioner's end-of-tour award, the AO found that Petitioner's chain of command would have been justified in rescinding this discretionary award in accordance with reference (f) upon discovering that Petitioner's conduct was not "exceptionally meritorious" due to her misconduct. See enclosure (23).

ee. By e-mail dated 6 December 2021, Petitioner's provided a rebuttal to the above-referenced AO for the Board's consideration. After providing paragraph-by-paragraph commentary on the factual background contained in the AO, Petitioner highlighted the fact that the main witness against her was biased against her due to previous adverse actions that she had taken against him.⁹ Petitioner also provided several character statements, and highlighted the fact that these individuals had relevant testimony but were never interviewed by the IO. See enclosure (24).

ff. Petitioner supplemented her response to the AO by another e-mail also sent on 6 December 2021. In this supplemental response, Petitioner made the following contentions:

(1) Petitioner points out inconsistencies in the original FITREP sent up for review and the final one that was submitted for filing.¹⁰ Petitioner further cites to an e-mail suggesting that the process for filing her FITREP was confusing and dragged out by the chain of command, and suggests that this could be due to a conflict between the Reporting Senior and the Reviewing Officer.¹¹

⁹ Petitioner provided evidence of two counseling statements, and noted that witness was not recommended for promotion to Sergeant when selected due to lack of judgment and his recent counseling for lying to leadership.

¹⁰ Petitioner asserts that the original FITREP issued was adverse in nature, but that the final version reflects that it was kicked back and turned into a "not observed" FITREP by the Reviewing Officer. Petitioner contends that this could be attributed to the third officer review that the adverse FITREP would have to go through, which could have reflected poorly on the rating chain.

¹¹ As noted in paragraph 3a above, Petitioner has not yet sought relief from the HQMC PERB. Accordingly, Petitioner has not exhausted her administrative remedies in this regard, so the Board did not consider her supplemental request, made in her AO rebuttal, to remove the subject FITREP.

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(2) Petitioner suggests that inconsistencies between her chain of command and HQMC provide examples of how her case was handled incorrectly by the chain of command and how the administrative system failed in this case.

(3) Petitioner cites to an e-mail providing her guidance regarding how to continue fighting the results of her misconduct through the BCNR, presumably in response to the AO suggestion that her application should be denied.

See enclosure (25).

gg. By e-mail dated 10 December 2021, Petitioner supplemented her rebuttal to the AO by further attacking the credibility of the main witness against her. Referring back to the adverse counseling statements that she issued to this NCO, Petitioner noted that his statement was provided after the counseling statement. She also asserted that this witness used "loaded language" and mischaracterized the nature of Petitioner's dinner meeting with the other NCO that she was alleged to be dating. Petitioner also noted that this witness's statement that he saw Petitioner holding hands with the NCO is false because she only visited the location that he cited with a different NCO. She also highlighted the fact that this witness changed his testimony to claim personal knowledge of an event that he had previously stated that another Marine witnessed. Finally, Petitioner again asserted that she did not intend to lie to the IO, but rather failed to provide precisely correct answers due to faulty memory. See enclosure (26).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found insufficient evidence of any material error or injustice warranting relief.

This Board is not an investigative body. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that naval officials properly performed their assigned duties. In this case, there was no reason for the Board to believe that the IO who conducted the CI, or that the many decision makers and/or legal reviewers who reviewed it at various stages of this case, failed to perform their duties properly. Specifically, the Board found no evidence to support Petitioner's contention that the IO's findings were tainted by gender bias. Even if the IO had made comments regarding Petitioner's choice of apparel at off-duty events or that Petitioner needed to be sensitive to how her actions could be perceived by enlisted Marines as a female officer, as Petitioner contends, such statements do not reveal a gender bias. Rather, they reflect the type of common sense mentorship that a more senior officer would naturally provide to a junior officer. The IO's findings were clearly influenced by his perception that Petitioner was being deceptive during the investigation, and he documented the reasons for this belief at the time and before he likely would have been aware of Petitioner's EO complaint. In fact, the IO went so far as to caveat his adverse findings by noting that Petitioner is a "young officer ... at an isolated unit, away from the parent command" and that "[s]he has been exposed to poor senior enlisted leadership" during her first assignment to explain Petitioner's conduct. Such a statement does not reflect an adverse bias, but rather a concern that Petitioner's understanding of her responsibilities and development as an officer may have been hindered by the circumstances of her first assignment in the Marine Corps. The IO also recommended that

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Petitioner's misconduct could be remedied with a non-punitive letter of caution if she demonstrated an adequate level of remorse and accountability for her actions, which further demonstrated a lack of bias by the IO. The Board acknowledges that Petitioner presented evidence contrary to the findings of the CI, but IOs are often presented with conflicting evidence and statements. Their responsibility is to weigh the evidence and the credibility of the witnesses in reaching their conclusions. In this case, the IO documented his reasons to question Petitioner's credibility. Accordingly, the Board found no reason to question the results of the CI.

The Board found the finding that Petitioner fraternized with a senior NCO to be reasonable based upon the evidence reflecting that she was observed on what appeared to be a "date" with the NCO in question. The Board acknowledged Petitioner's contention that the main witness against her was unreliable and biased, but these assertions of bias were Petitioner's conjecture. In this regard, the Board noted that Petitioner provided a character reference from the NCO in question, and while he was extremely complimentary of Petitioner's leadership and character, he did not refute or even address the allegation that he was engaged in an inappropriately familiar relationship with Petitioner. While certainly not conclusive, the absence of such a comment highlighted Petitioner's failure to meet her burden of proof for relief from the Board. The Board found Petitioner's contention that a male officer would not face similar scrutiny to be false, as a male officer observed to have engaged in similar conduct with an enlisted female Marine to that which Petitioner was observed to have engaged in with an enlisted male Marine would indeed face similar scrutiny. Accordingly, the Board found no error or injustice in the substance of the adverse information against Petitioner.

The Board's confidence that Petitioner has not been the victim of an injustice was enhanced by the fact that the process of reference (d) worked as it was intended and to Petitioner's significant benefit. Paragraph 010604 of reference (d) mandated that Petitioner's substantiated misconduct be reported in the ROM since she refused NJP and her misconduct was determined not to warrant court-martial. The ROM was provided to Petitioner for comment, and then forwarded through the chain of command to the DC (M&RA), as required by paragraph 010603 of reference (d). This process ensured that Petitioner received due process in the material ultimately filed in her naval record, and ultimately resulted in the exclusion from Petitioner's naval record of a substantial portion of the adverse findings made by the CI. The fact that Petitioner benefitted so substantially by the high-level review of the CI satisfied the Board that the evidence was sufficient to support the remaining adverse material in her record.

The Board noted that Petitioner's reprisal complaint was reviewed by the IGMC, which found that it did not meet the threshold criteria for further investigation under the MWPA, and that the DODIG concurred with this determination. The Board noted that the CI IO documented the substance of his interview with Petitioner, to include his observations of deception, soon after the interview was conducted and most likely before he would have had reason to know of Petitioner's EO complaint. Further, Petitioner's contention that the CI findings could have been in reprisal for her EO complaint was pure conjecture, and not based on any evidence. Accordingly, the Board found Petitioner's contention that the CI findings may have been in reprisal to her EO complaint to be without merit.

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The Board found Petitioner's contention that the CI was inadequate in that it included only statements from three individuals to be without merit. The evidence reflects that the IO sought the testimony of other relevant witnesses, but at least one of those witnesses invoked their right to remain silent. Further, it is not clear what relevant evidence Petitioner believes that her commander would have offered, as there was no indication that he was a witness to the specific incidents which raised questions about her conduct. The Board found it likely that he would have been interviewed if the investigation had lead the IO to believe he had relevant testimony, and Petitioner had the opportunity to seek his testimony to refute the evidence against her. As noted above, the Board found no reason to question that the IO properly weighed the evidence and the credibility of the witnesses in reaching his conclusions. Finally, the Board noted that all of the adverse findings arising from the CI were excluded from Petitioner's naval record except for those pertaining to the NCO with whom she was allegedly engaged in an inappropriate relationship. Accordingly, even if it was an error for the IO not to interview all of the enlisted Marines in question, such an error was rendered harmless by the decision to exclude a substantial portion of the CI findings from Petitioner's naval record.

Having found no error or injustice in the contents of the CI or in the adverse matters arising from it present in Petitioner's naval record, the Board also found no error or injustice in Petitioner's removal from the FY 2021 USMC Captain promotion selection list or the rescission of her end of tour award. In accordance with reference (e), the name of any officer who is the subject of a pending or ongoing investigative, administrative, or disciplinary action will normally be withheld from the appointment or nomination scroll pending final adjudication per Department of Defense policy, and the SECNAV will make a final determination on recommendations to support an officer's promotion or withhold the officer's name from the scroll. Petitioner was provided fair opportunity to comment on the recommendation to remove her name from the promotion list, and she availed herself of that opportunity. Accordingly, the Board found no error or injustice in Petitioner's removal from the FY 2021 USMC Captain promotion selection list by the SECNAV. Reference (f) provides that the end of tour award for which Petitioner was nominated was discretionary that she was not entitled to it based solely upon her completion of her tour of duty. Rather, it provides that the nomination for the award "must be based on performance/accomplishment that clearly exceeds that normally expected from a person of that grade and experience." Given the misconduct which was substantiated and entered into Petitioner's naval record, the Board found no error or injustice in the rescission of the end of tour award for which Petitioner was nominated.

RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USMC [REDACTED]

5. The foregoing action of the Board is submitted for your review and action.

1/31/2022

[REDACTED]

Executive Director

SECRETARY OF THE NAVY DECISION: [REDACTED]

FEB 10 2022

Board Recommendation Approved (Deny Relief) [REDACTED]

Petitioner's Request Approved (Full Relief – Remove all adverse material related to the substantiated findings of the subject CI from Petitioner's naval record; Correct Petitioner's naval record to reflect that she was not removed from the FY 2021 USMC Captain promotion selection list and process her for promotion subject to her selection by the FY 2021 USMC Captain PSB with the same date of rank that she would have held but for her removal from the promotion list; Issue Petitioner a Navy-Marine Corps Commendation Medal under my authority for the period in question.)

[REDACTED]

Secretary of the Navy